IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

ST.Rev..No. 102 of 2003

(TA.No.465/2002 OF KERALA SALES TAX APPELLATE TRIBUNAL, THIRUVANANTHAPURAM (ORDER DATED 22-11-2002)

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PETITIONER/APPELLANT IN TA/ASSESSEE:

M/S. QUILON RADIO SERVICE,
M.G. ROAD, THIRUVANANTHAPURAM,
REPRESENTED BY ITS PARTNER MR. S. GIRIDHARAN.

BY ADV. SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.ANIL D. NAIR
SMT.PRIYA MANJOORAN

RESPONDENT: RESPONDENT IN T.A./REVENUE:

STATE OF KERALA.

BY SR. GOVERNMENT PLEADER SRI. MUHAMMED RAFIQ.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 17/10/2007, ALONG WITH STRV NO. 124 OF 2003 STRV NO. 125 OF 2003 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

S.T.Rev.Nos.102, 124 & 125 of 2003

Dated, this the 17th day of October, 2007

ORDER

H.L.Dattu, C.J.

These revision petitions pertain to the assessment years 1998-99, 1999-2000 and 2000-2001 respectively.

2. These revision petitions are filed by the assessee, being aggrieved by the orders passed by the Sales Tax Appellate Tribunal in T.A.Nos.465/2002, 466/2002 and 467/2002 respectively.

3. The assessee is a dealer in Refrigerators, Washing Machines, Televisions, etc. At the time of effecting sales of Refrigerator's, Washing Machine's, Television's, etc., petitioner collects a particular amount towards the warranty.

4. The assessing authority is of the opinion that the warranty so collected by the assessee while effecting sales of Refrigerator's, Washing Machine's, Television's, etc. forms part of the sale price and therefore, is the taxable turnover of the dealer, and accordingly has quantified the tax due under the provisions of the Kerala General Sales Tax Act.

5. Aggrieved by the aforesaid order passed, the assessee had unsuccessfully carried the matter before the first appellate authority and the Tribunal.

6. The correctness or otherwise of the orders passed by the assessing authority, the first appellate authority and the Tribunal is questioned by the

assessee in these sales tax revisions.

7. Sri. Anil D. Nair, the learned counsel appearing for the petitioner, would submit that a customer while making purchase of Refrigerator, Washing Machine, Television, etc. has got an option either to pay towards the warranty charges or to take it without such a warranty. If the payment is compulsory, then only it would form part of the sale price. Otherwise, the warranty amount cannot be included within the meaning of the expression 'sale price'. If that is so, it will not form part of the taxable turnover of the dealer.

8. The learned counsel after making the aforesaid submission would request us, that, whether the payment of the amount towards warranty was optional or compulsory was not canvassed by the assessee either before the assessing authority or before other forums and therefore a request is made to remand the matter to the assessing authority to redo the matter in accordance with law after permitting the petitioner to produce necessary documents in support of his case.

9. We would have conceded to the request made by the learned counsel Sri.Anil D. Nair, if he had demonstrated before us that the customer who purchases the Refrigerator, Washing Machine, Television, etc. had an option either to purchase the machines with the warranty or without such warranty condition. In the absence of such materials, in our opinion, it would be futile exercise to remand the matter to the assessing authority.

10. Before the assessing authority, it was the case of the assessee that

amounts collected towards the warranty while effecting sales of Refrigerator, Washing Machine, Television, etc. was for and on behalf of the principal, namely the manufacturer of the aforesaid machines, and therefore, it would not form part of the taxable turnover of the assessee. This contention of the assessee is negatived by the assessing authority, keeping in view the meaning of the expression 'sale price' enunciated by the apex Court and after referring to the meaning of the expression 'turnover' and 'taxable turnover' that finds a place in the dictionary clause of the Sales Tax provisions.

11. In the instant case, the assessee collects certain amounts towards the warranty for effecting the sale of Refrigerator, Washing Machine, Television, etc. The customer, in fact, has no option and he has to compulsorily pay that amount for purchase of the aforesaid machines. If that is so, then that amount would form part of the 'sale price' and therefore, the amount so collected would form part of the taxable turnover of the dealer. What is 'sale price', total and and taxable turnover in so far as fiscal legislation is fully discussed by the Tribunal. In our view, repetition of the same is wholly unnecessary, since the meaning assigned to these expressions is not disputed by the learned counsel for the assessee, nor it is disputed by the learned counsel for the assessee that, if the warranty is not shown as optional, then, the same would form part of the sale price of the commodity in question. Keeping all these factors in view, the Tribunal, in our opinion, has rightly come to the conclusion that the assessing authority was justified in completing the

assessments by including the amounts collected by way of warranty in the hands of the assessee. In that view of the matter, we do not see any error in the orders passed by the Tribunal. Therefore, the revision petitions filed by the assessee require to be rejected and they are accordingly rejected. The questions of law framed by the assessee requires to be answered in negative. Accordingly it is ordered.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns/DK.